

JAN 24 2019

A BILL FOR AN ACT

RELATING TO ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that state law requires
2 environmental review for power-generating facilities, which are
3 defined as new or expanded fossil-fueled, electricity-generating
4 facilities that exceed five megawatts. Projects with minimal
5 impacts are exempted. The definition of power-generating
6 facility in section 343-2, Hawaii Revised Statutes, also
7 excludes other dispatchable non-fossil fuel power-generating
8 facilities that will have significant effect on the environment,
9 including actions that irrevocably commit a natural resource;
10 curtail the range of beneficial uses of the environment; are
11 contrary to the State's environmental policies and long-term
12 environmental goals as established by law; or adversely affect
13 the economic welfare, social welfare, or cultural practices of
14 the community and State. Many of these non-fossil fuel
15 renewable electric power-generating facilities have operational
16 limits set by state and federal permit requirements, the federal
17 Endangered Species Act, natural resources taking laws, and other



1 permit conditions that limit the production of electricity to
2 less than one hundred per cent capacity. Yet, new or converted
3 renewable non-fossil fuel power-generating facility projects are
4 currently being negotiated over power purchase agreements with
5 the public utility and approved by the public utilities
6 commission (PUC) during the initial entitlement and permitting
7 phase without the benefit of environmental review under the
8 Hawaii Environmental Procedures Act. In addition, these
9 projects are starting construction before all of the
10 environmental impacts and operational limits are discovered.

11 Under these circumstances, the PUC and the public utility
12 are forced to work with overly ambitious rate formulae and costs
13 analysis as though the electricity producer/seller is going to
14 produce electricity at full capacity, twenty-four hours a day,
15 when the reality is that environmental laws will add constraints
16 on and curtail the capacity of the project, undoing the
17 projected figures used in the power purchase agreement and the
18 utility's long-term renewable portfolio analysis. This is
19 contrary to the State's renewable energy goals in the long run,
20 and creates the potential for troubled renewable energy
21 projects.



1 Early discovery of environmental limitations of the
2 operation of non-fossil fuel renewable power-generating
3 facilities would result in long-term benefits to the people of
4 Hawai'i. The best available technology to achieve compliance
5 with environmental laws with minimum loss capacity of these
6 facilities can be and should be discovered at the earliest
7 practicable time and designed and implemented in the initial
8 construction. Early analysis and discovery of the best design
9 and the facility cost to achieve the best environmental outcome
10 and comply with state and federal environmental laws,
11 regulation, and rules based on known and achievable dispatchable
12 renewable electricity capacity will aid the utility, PUC, and
13 people of Hawai'i by providing more accurate costs and rate
14 concepts. This will allow for more informed decision making
15 when making comparisons between various renewable, non-fossil
16 fuel power-generating project proposals to achieve the State's
17 energy goals while simultaneously performing the State's duty to
18 protect and conserve Hawai'i's natural resources for present and
19 future generations under the Hawaii state constitution.

20 The purpose of this Act it to delete the definition of
21 power-generating facility and require all power-generating



1 facilities that sell power to a utility to complete an
2 environmental review under the Hawaii Environmental Procedures
3 Act, chapter 343, Hawaii Revised Statutes, subject to the
4 environmental council and exclusions under section 343-6, Hawaii
5 Revised Statutes.

6 SECTION 2. Section 343-2, Hawaii Revised Statutes, is
7 amended by deleting the definition of "power-generating
8 facility".

9 [~~"Power-generating facility" means:~~

- 10 ~~(1) A new, fossil-fueled, electricity-generating facility,~~
11 ~~where the electrical output rating of the new~~
12 ~~equipment exceeds 5.0 megawatts, or~~
13 ~~(2) An expansion in generating capacity of an existing,~~
14 ~~fossil-fueled, electricity-generating facility, where~~
15 ~~the incremental electrical output rating of the new~~
16 ~~equipment exceeds 5.0 megawatts."]~~

17 SECTION 3. Section 343-5, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Except as otherwise provided, an environmental
20 assessment shall be required for actions that:



- 1 (1) Propose the use of state or county lands or the use of
2 state or county funds, other than funds to be used for
3 feasibility or planning studies for possible future
4 programs or projects that the agency has not approved,
5 adopted, or funded, or funds to be used for the
6 acquisition of unimproved real property; provided that
7 the agency shall consider environmental factors and
8 available alternatives in its feasibility or planning
9 studies; provided further that an environmental
10 assessment for proposed uses under section
11 205-2(d)(11) or 205-4.5(a)(13) shall only be required
12 pursuant to section 205-5(b);
- 13 (2) Propose any use within any land classified as a
14 conservation district by the state land use commission
15 under chapter 205;
- 16 (3) Propose any use within a shoreline area as defined in
17 section 205A-41;
- 18 (4) Propose any use within any historic site as designated
19 in the National Register or Hawaii Register, as
20 provided for in the Historic Preservation Act of 1966,
21 Public Law 89-665, or chapter 6E;



- 1 (5) Propose any use within the Waikiki area of Oahu, the
- 2 boundaries of which are delineated in the land use
- 3 ordinance as amended, establishing the "Waikiki
- 4 Special District";
- 5 (6) Propose any amendments to existing county general
- 6 plans where the amendment would result in designations
- 7 other than agriculture, conservation, or preservation,
- 8 except actions proposing any new county general plan
- 9 or amendments to any existing county general plan
- 10 initiated by a county;
- 11 (7) Propose any reclassification of any land classified as
- 12 a conservation district by the state land use
- 13 commission under chapter 205;
- 14 (8) Propose the construction of new or the expansion or
- 15 modification of existing helicopter facilities within
- 16 the State, that by way of their activities, may
- 17 affect:
- 18 (A) Any land classified as a conservation district by
- 19 the state land use commission under chapter 205;
- 20 (B) A shoreline area as defined in section 205A-41;
- 21 or



1 (C) Any historic site as designated in the National
2 Register or Hawaii Register, as provided for in
3 the Historic Preservation Act of 1966, Public Law
4 89-665, or chapter 6E; or until the statewide
5 historic places inventory is completed, any
6 historic site that is found by a field
7 reconnaissance of the area affected by the
8 helicopter facility and is under consideration
9 for placement on the National Register or the
10 Hawaii Register of Historic Places; and

11 (9) Propose any:

12 (A) Wastewater treatment unit, except an individual
13 wastewater system or a wastewater treatment unit
14 serving fewer than fifty single-family dwellings
15 or the equivalent;

16 (B) Waste-to-energy facility;

17 (C) Landfill;

18 (D) Oil refinery; or

19 (E) Power-generating facility[-] that sells
20 electricity to a utility through a power purchase
21 agreement."




1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

4

INTRODUCED BY:

 (BR)



S.B. NO. 1492

Report Title:

Energy; Environment; Power-Generating Facility; Environmental Assessment

Description:

Repeals the definition of power-generating facility under the Hawaii Environmental Procedures Act. Requires an environmental assessment for actions that propose any power-generating facility that sells electricity to a utility through a power purchase agreement.

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